

UNITED STATES DEPARTMENT OF AGRICULTURE

Farm Service Agency
Washington, DC 20250

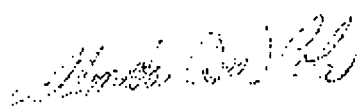
Notice FC-110

1951-S, 1962-A, and
1965-A

For: State and County Offices

**Instructions to Special Procedure Notice (PN) Dated March 14, 1997,
Implementing Federal Agriculture Improvement and Reform
Act of 1996 (1996 Act) Involving Loan Servicing**

Approved by: Acting Deputy Administrator, Farm Loan Programs



1 Overview

A

Background

The 1996 Act, which was signed on April 4, 1996, made several changes to the loan servicing authorities. Some changes were effective upon enactment; others were effective 90 days later on July 4, 1996; and other changes were to be effective when the regulations were issued.

The revised regulations were published in FR on March 5, 1997, with an effective date of March 14, 1997. The revised FmHA Instructions were issued by Special PN, dated March 14, 1997.

B

Purpose

This notice provides instructions about:

- how to implement certain provisions of the revised FmHA Instructions
- issues that have not yet been included in FmHA Instructions
- issues previously addressed in the following FC notices:
 - FC-37
 - FC-53, which expired 12-1-96
 - FC-59
 - FC-60
 - FC-67
 - FC-71.

Continued on the next page

Disposal Date

April 1, 1998

Distribution

State Offices; State Offices relay to County
Offices

3-31-97

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1 Overview (Continued)

C

Contact

Questions should be addressed to Kim Laris, LSPMD, through the State or Area Office.

2 Implementing Revised FmHA Instruction 1951-S

A

**30-Day Notices
Previously Sent
to Delinquent
Borrowers**

County Offices are no longer required to send 30-day notices to delinquent borrowers. The following describes the action to be taken for delinquent borrowers who were sent 30-day notices before March 14, 1997:

- borrowers who apply with a complete application before the borrower's account becomes 90 days past due, will not be sent another loan servicing package under the revised FmHA Instruction 1951-S
 - borrowers who do not apply with a complete application before the borrower's account becomes 90 days past due, will be sent another loan servicing package when the account becomes 90 days past due.
-

B

**Borrower
Requesting
1951-S Servicing
Before Account
Becomes 90
Days Past Due**

Note: County Offices shall follow this notice to service borrowers who request servicing before the borrower's account becomes 90 days past due, until notified otherwise.

Borrowers who are past due on their payments and request servicing before the account becomes 90 days past due, shall be provided only with FmHA Instruction 1951-S, Attachments 1 and 2 of Exhibit A. Do not include Exhibit A.

- If the account is delinquent, at least 30 days past due, the following conditions apply:
 - nonessential assets must be considered
 - writedown may be considered subject to other eligibility requirements
 - place a lien on all assets at the time of restructure.
 - Use FmHA Instruction 1951-S, Exhibit F to notify the borrower of FSA's offer to restructure the borrower's debt.
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Continued on the next page

2 Implementing Revised FmHA Instruction 1951-S (Continued)

**B
Borrower
Requesting
1951-S Servicing
Before Account
Becomes 90
Days Past Due
(Continued)**

- When AGCREDIT is revised, there will be a category, "Less than 90 days past due". Until AGCREDIT is revised, County Offices shall do either of the following:
 - wait to enter requests for servicing when the revised AGCREDIT is received in 2 weeks
 - track borrowers, who are less than 90 days past due, in AGCREDIT under category code CAT010, "Borrower 30 days past due", but immediately OTHER to CCS301, "Send or Provide Borrower with Attachments 1 and 2".

Notes: By tracking the borrower this way, the category code will be the indicator that the borrower is past due, and the current borrower servicing path will remind the servicing official not to accelerate or liquidate the loan.

If these borrowers are tracked under the 30-day category, and a writedown will be approved after softwood timber consideration, OTHER to "CCS342" and send FmHA Instruction 1951-S, Exhibit F.

- If the restructure is not approved before the borrower's account becomes 90 days past due (DALRS signed by the approving official), County Offices shall send the borrower a copy of FmHA Instruction 1951-S, Exhibit A and Attachments 1 and 2.
- Before sending FmHA Instruction 1951-S, Exhibit F to borrowers who are less than 90 days past due, County Offices shall make the following change to Exhibit F, page 4, to the paragraph "What Happens If You Do Not Accept the Offer":

In the first sentence, add a period after "servicing" and remove "and send you an additional notice stating that FSA intends to liquidate your account."

Continued on the next page

2 Implementing Revised FmHA Instruction 1951-S (Continued)

B Borrower Requesting 1951-S Servicing Before Account Becomes 90 Days Past Due (Continued)

- Because these borrowers have never been notified properly of their delinquency as a borrower who is 90 days past due, with FmHA Instruction 1951-S, Exhibit A, County Offices:
- must not send these borrowers the notices of intent to accelerate in FmHA Instruction 1951-S, Attachments 5-A and 6-A or 9-A of Exhibit A
- shall send these borrowers a letter to notify them that they do not qualify for restructuring and will be offered the opportunity to appeal any restructuring denial.

Note: County Offices shall renotify borrowers who do not qualify for restructuring of their servicing rights by sending these borrowers FmHA Instruction 1951-S, Exhibit A and Attachments 1 and 2 when their accounts become 90 days past due.

- Buyout will not be considered until after the 90-day notices are sent.
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C Sending Servicing Packages

Exhibit 1 must be sent with each 1951-S package. This cover sheet will alert borrowers of the change in the notification requirements and that this will be the only notice sent.

Servicing packages will no longer be available through KCMO supply. These packages shall now be prepared and printed in the State Office on an as needed basis. The following forms are to be included in the package:

- the cover sheet in Exhibit 1
- FmHA Instruction 1951-S, Attachment 1 of Exhibit A
- FSA 410-1 (Rev. 03-31-97)
- FmHA 431-2 (Rev. 7-94)
- FmHA 440-32 (4 copies) (Rev. 5-93)
- RD 1910-5 (2 copies) (Rev. 10-96)
- FmHA 1960-12 (Rev. 7-90), or other similar type worksheet if available
- RD 1956-1 (2-94)
- FmHA 1924-27 (2-94).

Note: Offices may continue to use copies of RD 1956-1 that still reflect FmHA 1956-1.

Continued on the next page

Notice FC-110

2 Implementing Revised FmHA Instruction 1951-S (Continued)

C

**Sending
Servicing
Packages
(Continued)**

The farm loan servicing employee shall include the list of current commodity prices and add additional letters and forms as follows.

IF the...	THEN include...
borrower's account is current or less than 90 days past due	FmHA Instruction 1951-S, Attachment 2 of Exhibit A.
borrower's account is at least 90 days past due	FmHA Instruction 1951-S, Exhibit A and Attachment 2.
borrower's account is in nonmonetary default only or past due and in nonmonetary default	FmHA Instruction 1951-S, Attachments 3 and 4 of Exhibit A.
borrower meets the following conditions: <ul style="list-style-type: none"> • previously filed bankruptcy and received a discharge • is no longer under court jurisdiction • has defaulted on a confirmed reorganization plan 	<ul style="list-style-type: none"> • RD Instruction 1962-A, Exhibit D-1, dated March 14, 1997 • FmHA Instruction 1951-S, Attachments 2 or 3 and 4 of Exhibit A.
borrower has filed bankruptcy or is past due on a confirmed plan.	<ul style="list-style-type: none"> • RD Instruction 1962-A, Exhibit D, dated April 17, 1991 • FmHA Instruction 1951-S, Attachment 2 of Exhibit A.

AD-1026 and SCS-CPA-026 are not required if these forms have already been completed, are currently on file with FSA, and reflect all land that is owned and leased by the borrower. Copies of these forms must be in the Farm Loan Program (FLP) borrower case file.

D

**Changes
Reflected on
540 Report**

The April 540 Report will be the first report that reflects the 90-day past due changes.

Continued on the next page

Notice FC-110

2 Implementing Revised FmHA Instruction 1951-S (Continued)

E Restructuring EE Operating- Type Loans

FmHA Instruction 1951-S, Section 1951.909(e)(1)(xi) now allows for restructuring of EE operating-type loans up to 15 years from the date of rescheduling.

Note: An Administrator's exception is no longer required.

F Market Value Buyout

All buyouts approved on or after July 4, 1996, will be at the current market value, less prior liens, instead of net recovery value.

FmHA Instruction 1951-S, Exhibits 5, 5-A, 6, and 6-A have been revised to reflect these changes.

The ADPS transaction to process the market value buyout is not yet available. County Offices shall:

- file a copy of the DALRS report in a pending folder until notified of processing capabilities
- process any buyout payment
- flag the account "51-S" in the interim.

G Leaseback/ Buyback

Leaseback/Buyback is no longer an option under FmHA Instruction 1951-S. However, the following cases will continue to be considered for leaseback/buyback under the previous instructions.

- Preacquisition leaseback/buyback is available to borrowers who filed a complete application for primary and preservation loan servicing or preservation loan servicing on or before April 4, 1996. Offices shall not notify these borrowers of postacquisition preservation.
- Postacquisition leaseback/buyback is available to borrowers who filed a complete application for preservation loan servicing on or before April 4, 1996.
- Leases in effect as of April 4, 1996, will be honored and purchase options may be exercised according to the terms of the lease.

Further guidance on servicing leaseback/buyback cases will be provided in the near future as FmHA Instruction 1951-S, Exhibit N.

Continued on the next page

2 Implementing Revised FmHA Instruction 1951-S (Continued)

H

Conservation Contract

DALRS has not been changed yet to calculate conservation contract debt cancellation, if less than the maximum 50-year term. Until DALRS is revised, County Offices shall:

- calculate debt cancellation for 10- and 20-year terms according to FmHA Instruction 1951-S, Exhibit H, Section VII
- deduct the amount cancelled by conservation contract from the loan balances before entering the loan balances in DALRS.

The FLP loans on which to apply the cancellation of debt will be based on lien priority. Approval by the National Office through exception authority is no longer required.

When processing debt cancellation conservation contracts, County Offices may still use a management authority, such as a State wildlife agency. However, in all cases, USDA remains the enforcement authority, regardless of who the management authority may be.

- If County Offices intend to use an outside management authority, County Offices shall:
 - assign the management authority to this entity through the use of an assignment form
 - provide for the designation of a manager for the contract area on the assignment form
 - obtain the concurrence of the County Office's Regional OGC when drafting a form to be used for the assignment of management authorities
 - record the management authority assignment form along with the conservation contract
 - ensure that the management or conservation plan for the contract area also references the management authority.
 - If the borrower/landowner is to manage his or her own property, the assignment of management authority does not need to occur.
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3 FmHA Instructions 1962-A and 1965-A Subordination Authorities

A
Subordinations
to Borrowers
Who Received
Previous Debt
Forgiveness

Previous debt forgiveness is not a valid reason for rejecting subordination requests. Therefore, borrowers who have had previous debt forgiveness may still be approved for subordinations.

B
Subordination of
Farm Ownership
Security for
Refinancing

Since refinancing is no longer an authorized direct Farm Ownership (FO) loan purpose, subordinations for refinancing purposes of direct FO loan security instruments, such as mortgages and deeds of trust, can no longer be approved until the existing regulations are revised. Until that time:

- all subordinations for refinancing that affect the security instrument of FO loans must be approved by the National Office through exception authority
 - submit requests for exception to LSPMD, according to FmHA Instruction 1965-A, Section 1965.35.
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C
Subordination of
Operating Loan
Security for
Refinancing

Refinancing is still an authorized direct Operating Loan (OL) purpose. However, a subordination can only be approved for refinancing if the borrower has not had a direct or guaranteed OL refinanced with direct or guaranteed funds more than 4 times previously and either of the following conditions is met:

- the borrower has a direct loan under the CONACT and has suffered a qualifying physical or production loss because of a major disaster declared by the President or a natural disaster designated by the Secretary
- a non-USDA debt is being refinanced.

Note: Since FSA does not normally refinance its own debt, except possibly with EM funds, FSA does not anticipate that this limitation will affect many borrowers. Also, refinancing is not restructuring under loan servicing authorities.

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3 FmHA Instructions 1962-A and 1965-A Subordination Authorities (Continued)

C

Subordination of Operating Loan Security for Refinancing (Continued)

If the request for a subordination for refinancing purposes of OL security instruments does not meet the requirements in this subparagraph, these requests cannot be approved until existing regulations are revised. Until that time:

- requests of this type must be approved by the National Office through exception authority
 - submit requests for exception authority to LSPMD according to FmHA Instruction 1962-A, Section 1962.3(c).
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4 Automation Capabilities

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Using AGCREDIT

AGCREDIT is being revised and should be available in April 1997. All exhibits in AGCREDIT are being revised to reflect the new requirements. The exhibits in expired Notice FC-53 are no longer current and must not be used.

Until the revised software is received, County Offices shall change the AGCREDIT letters to reflect the new revisions or type them separately in word processing. Borrowers shall be tracked in AGCREDIT as follows:

- borrowers whose accounts are at least 90 days past due will be initialized as 180 days delinquent
 - borrowers whose accounts are less than 90 days past due will be initialized according to subparagraph 2 B.
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4 Automation Capabilities (Continued)

B

DALRS Report

DALRS has been revised to incorporate all of the 1996 Act changes, except for conservation contract described in subparagraph 2 H. Also, until further enhancements are made, County Offices shall take the following actions:

- continue to use the worksheet in Notice FC-60, Exhibit 1 to calculate the balance available and non-FLP debt for all DALRS 6.1a and 4.2
- if a feasible plan is found with a writedown with a cash flow margin of 101 percent or higher, another DALRS report must be run with the "current Eligible for Writedown/Writeoff" field marked "N" for "NO". This will be the indicator for DALRS not to consider writedown.

Note: FmHA Instruction 1951-S, Exhibit F and Attachment 2 have been revised to reflect the option to choose between a restructure with or without a writedown.

Cover Sheet for 1951-S Loan Servicing Package

!!READ!!**IMPORTANT****!!READ!!**

You should carefully read the enclosed attachments to FmHA Instruction 1951-S as they contain important information about FSA's loan servicing programs. Because of changes in the 1996 Farm Bill, FSA will no longer be notifying you of your 1951-S rights when you are 30 days past due or 180 days delinquent. FSA must now notify you when you are 90 days past due. If you are 90 days or more past due on your account, or have violated your loan agreements, you **MUST** either respond to this notice or pay current and resolve any loan agreement violations within the 60-day response period. This is your only chance. If you do not resolve your defaults, or respond within the 60-day response period, FSA will have no choice but to start liquidation action against you.

The forms and information requested in this package **MUST** be completed and returned to the FSA county office within 60 days from the date you receive this notification package in order to be considered for FSA's primary and preservation loan servicing programs. You should contact your local FSA servicing official if you have any questions or need additional forms.

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- _____ Attachment 2 or 4 of Exhibit A of FmHA Instruction 1951-S. All liable parties must sign and date the response form.
 - _____ Form FSA 410-1, "Request for Direct Loan Assistance." Complete all blanks with the required information, and sign and date the form. All parties liable for the debt must sign. The financial statement can be left blank if a separate financial statement is completed on Form FmHA 431-2 or other acceptable form. A financial statement, not over 90 days old, is required of all individuals and entities personally liable for the debt.
 - _____ Form FmHA 431-2, "Farm and Home Plan". Fill in all blanks with the required information and sign and date, or present another acceptable plan of operation. If you already have a current Farm and Home Plan on file with your local county office for the current year, you may want to check with the county office to determine if the cash flow should reflect the current production and marketing year or the next year. You should use the enclosed commodity prices to project your planned income. Your production figures should be based on a 5-year history of your operation, unless otherwise agreed upon by you and FSA.
 - _____ Form FmHA 440-32, "Request for Statement of Debts and Collateral". Enclosed are five copies of this form. You should complete one for each outstanding creditor listed on your financial statement. Complete the name and address of the creditor, account number, if any, and your name. All parties liable to the creditor must sign and date the forms. Return these forms with the application and FSA will mail them to your creditors for completion, or if you wish, you may deliver the forms directly to your creditors with instructions that the forms be completed and returned to your local FSA county office.

Continued on the next page

Cover Sheet for 1951-S Loan Servicing Package (Continued)

- _____ Form RD 1910-5, "Request for Verification of Employment". Enclosed are 2 copies for completion by all parties liable for the debt who are employed off the farm. Complete items 1, 7, and 8 and sign. Return these forms with your application package, and FSA will mail them to your employer for completion. If there is no off-farm employment, you may discard these forms.

 - _____ Production History. Provide the actual production and yields of your crops, livestock, and other commodities for each of the 5 years immediately preceding the year of application or the years you have been farming, whichever is less. The crop yields should be separated and identified by farm tract. Form FmHA 1960-12 is enclosed for you to complete the backside only, or provide the same information on another similar type worksheet. You may want to check with the county office to determine if FSA already has a record of your production history on file for you and obtain a copy. If that is the case, you may only need to provide the most recent year.

 - _____ Income Tax Returns. Provide copies of income tax returns and any supporting documents for the last 5 years immediately preceding the year of application, or the years you have been farming, whichever is less, and if not already on file with FSA. If copies of tax records are not readily available, you can obtain them from the Internal Revenue Service.

 - _____ Map or aerial photo. If you wish to apply for conservation contract debt cancellation, you should provide a copy of a map or aerial photo identifying the portion of the land and approximate number of acres to be considered in the contract. Aerial photos can be obtained from the local FSA office.

 - _____ Form FmHA 1924-27, "Request for Waiver of Borrower Training Requirements". This form is enclosed if you wish to request a waiver of the borrower training requirements. This form is not applicable if you have previously received a waiver from FSA, you are currently in the borrower training program, or have successfully completed the program.

 - _____ Form RD 1956-1, "Application for Settlement of Indebtedness". You only need to complete this form if you wish to apply for debt settlement. If you do not apply now, you can apply later at any time.

 - _____ Form AD-1026, "Highly Erodible Land conservation (HELC) and Wetland Conservation (WC) Certification". You will be required to complete this form in the FSA county office if the one you have on file does not reflect all of the land you currently farm, own or lease, or plan to farm. If you farm in more than one county, you may need to complete more than one certification.

 - _____ Form SCS-CPA-026, "Highly Erodible Land and Wetland Conservation Determination". This form must be obtained from the Natural Resources and Conservation Service (NRCS) county office if a copy is not already in your FSA case file for all the property you currently farm or plan to farm.
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